

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION DIVISION**

**CLARISSA PORTILLO,**  
**Plaintiff,**

**vs.**

**MUNOZ TRUCKING, INC.,**  
**Defendant.**

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**CIVIL ACTION NO. 3:19-CV-47**

**NOTICE OF REMOVAL**

**TO THE HONORABLE JUDGE OF SAID COURT:**

1. Defendant, Munoz Trucking, Inc., by its undersigned attorney, respectfully shows this Court:

2. On December 20, 2018, Cause No. 2018DCV4834 was commenced against Defendant in the 327<sup>th</sup> District Court of El Paso County, Texas, and is now pending therein.

3. On January 8, 2019, Defendant was served with Plaintiff's Original Petition in the above-entitled action.

4. As of the date of this filing, the following pleadings have been filed in the state court action in addition to the Plaintiff's petition: Defendant's Original Answer. Copies of all process, pleadings and orders served upon Defendant in the above-entitled action are attached hereto as Exhibits A, and filed herewith.

5. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1331, and the action may therefore be removed to this Court pursuant to 28 U.S.C. §1441(b).

6. The above-entitled action is a civil action for claims under the Family & Medical Leave Act of 1993 (FMLA), 29 U.S.C. §2601, *et. seq.*, and Section 2617(a) of the FMLA, 29

U.S.C. §§2614, 2615, 2617(a), as Plaintiff, Clarissa Portillo, specifically alleged wrongful termination, retaliation and interference, in violation of the protections of the Family Medical Leave Act, as against Defendant Munoz Trucking, Inc.

7. A jury demand has been made in Cause No. 2018DCV4834.

8. This notice is filed with this Court within 30 days after service on Defendant of Plaintiff's Original Petition in the above-entitled action.

WHEREFORE, Defendant prays that the above-entitled action be removed from the 327<sup>th</sup> District Court of El Paso County, Texas to this Court.

Respectfully submitted,

By: /s/ Mario A. Gonzalez  
MARIO A. GONZALEZ  
Texas Bar No. 08130710  
E-Mail: mario@gonzalezlawfirm.com  
1522 Montana Ave., Suite 100  
El Paso, Texas 79902  
Tel. (915) 543-9802  
Fax. (915) 533-0588  
Attorney for Defendant  
Munoz Trucking, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2019, I electronically filed the Notice of Removal with the Clerk of the Court using the CM/EMF system, which will send notification of such filing to Oscar Mendez, Jr.

/s/ Mario A. Gonzalez  
MARIO A. GONZALEZ

## EXHIBIT “A”

## THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **MUNOZ TRUCKING, INC.**, who may be served with process by serving its registered agent, John Gates, or any other authorized officer or agent therein at 1108 N. Campbell, El Paso, TX 79902 or **wherever he/she may be found**

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **327<sup>th</sup> Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 20<sup>th</sup> day of December, 2018 by Attorney at Law, OSCAR MENDEZ, JR., 109 N. OREGON, 12<sup>TH</sup> FLOOR, EL PASO, TX 79901, in this case numbered **2018DCV4834** on the docket of said court, and styled:

**CLARISSA PORTILLO  
VS  
MUNOZ TRUCKING, INC.**

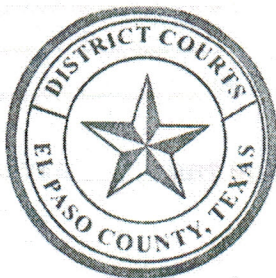
The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition, Plaintiff's First Set of Interrogatories to Defendant, First Request for Production of Documents and Things to Defendant, Jury Request accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 26<sup>th</sup> day of December, 2018.

CLERK OF THE COURT

**NORMA FAVELA BARCELEAU**  
District Clerk  
El Paso County Courthouse  
500 E. San Antonio Ave, RM 103  
El Paso, Texas 79901



Attest: NORMA FAVELA BARCELEAU District Clerk  
El Paso County, Texas

By: Stephanie V. Aguilar, Deputy  
Stephanie V. Aguilar

Rule 106: "the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation with the date of delivery endorsed thereon and with a copy of the petition attached thereto."

El Paso County - 327th District Court

Filed 12/20/2018 2:02 PM

Norma Favela Barceleau

District Clerk

El Paso County

2018DCV4834

CLARISSA PORTILLO,

Plaintiff,

vs.

MUNOZ TRUCKING, INC.

Defendant.

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Cause No. 2018-DCV \_\_\_\_\_

**PLAINTIFF'S ORIGINAL PETITION**

COMES NOW SYLVIA CEPEDA ("Plaintiff") complaining of MUNOZ TRUCKING, INC. ("Defendants") and for a cause of action would respectfully show the Court as Follows:

**I. Parties, Jurisdiction And Venue**

Plaintiff is currently a citizen and resident of El Paso, Texas.

Defendant MUNOZ TRUCKING, INC., is a Texas corporation doing business in El Paso, Texas and may be served with process by serving its registered agent, JOHN GATES, or any other authorized officer or agent therein 1108 N. Campbell, El Paso, Texas 79902 and/or where ever may be found.

This is a proceeding authorized by and instituted pursuant to the Family & Medical Leave Act of 1993 (FMLA). 29 U.S.C. §2601, *et seq.* It is brought to prevent Defendants from denying, restraining or otherwise interfering with the rights guaranteed to Plaintiff by FMLA, and to recover damages and other relief authorized by section 2617(a) of the FMLA. 29 U.S.C §§2614, 2615, 2617(a).

This Court has subject matter jurisdiction because district courts are constitutional courts of general jurisdiction.

This Court has personal jurisdiction, both specific and general, over Defendant because

they do business in Texas. Additionally, Plaintiff's cause of action arose in Texas and Defendant is amenable to service by a Texas Court.

Venue is proper in El Paso County because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred there. TEX.CIV.PRAC. & REM. CODE §15.002(A) (1).

## **II. Factual Background**

Plaintiff was employed by Defendant as a dispatcher since on or about January 23, 2017.

On or about July 16, 2018 Plaintiff's daughter was involved in an ATV accident in which Plaintiff's Daughter broke her femur. Plaintiff request FMLA from Defendant to care for Daughter while she recovered from the ATV accident.

On or about August 3, 2018 Plaintiff was granted a family and medical leave of absence for Plaintiff's medical condition.

Plaintiff's Daughter was released from her Doctor's care on September 6, 2018.

After Plaintiff's FMLA request, Defendants began to retaliate against Plaintiff by ignoring Plaintiff, reducing Plaintiff's work hours, writing up Plaintiff for incidents that happened while Plaintiff was on FMLA Leave. On or about September 27, 2018 Plaintiff encountered an issue with Defendants system and noticed that the system was offsetting mileage. Plaintiff reported the issue to Rosie in accounting.

On or about September 28, 2018, Plaintiff was terminated. At the time of Plaintiff's termination Defendants used Plaintiff's FMLA as a motivating factor for termination. Defendant's pretextual reason for Plaintiff's termination was due to Plaintiff allegedly calling Rosie from the Accounting Department "old" and for stating that Defendant's needed to hire younger people.

Plaintiff was terminated on or about September 28, 2018. Plaintiff was allegedly terminated

for her unfounded remarks made. The reason given by Defendants is pretext.

### **III. Causes Of Action**

#### **A. FAMILY MEDICAL LEAVE ACT VIOLATIONS - WRONGFUL TERMINATION, RETALIATION and INTERFERENCE**

Plaintiff alleges and incorporates the allegations contained in Paragraphs as if fully stated herein.

Plaintiff has satisfied all jurisdictional prerequisites in connection with her claim under the Family Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601 *et. seq.*

Defendants are employer[s] as defined by the FMLA in 29 U.S.C. §2611(4).

During the time that Plaintiff was employed by Defendant, she was an "eligible employee" as defined by the FMLA in 29 U.S.C. §2611(2).

While Plaintiff was employed by Defendant, Plaintiff's Daughter had an illness that can be defined as a "serious health condition" under the FMLA as outlined in 29 U.S.C. §2611(11).

Plaintiff was entitled to medical leave to care for her Daughter's serious health condition as provided for in the FMLA (in 29 U.S.C. §2612(a)(1)(C)).

Defendant's retaliated against Plaintiff for exhausting the twelve (12) weeks of medical leave allowed under the FMLA (as discussed in 29 U.S.C. § 2612(a)(1)), Defendants terminated Plaintiff's employment for taking this medical leave to care for her Daughter's illness.

Defendants terminated Plaintiff's employment for requesting time to take off work for Plaintiff's Daughter's serious health condition, which violates the protections of the FMLA as outlined in 29 U.S.C. § 2615(a). Finally, Defendant failed to reinstate Plaintiff as required under the FMLA.

Defendant terminated Plaintiff's employment for requesting time off work to care

Plaintiff's Daughter's serious health condition, which violates the protections of the FMLA as outlined in 29 U.S.C. §2615(a).

#### **IV. Damages**

As a result of Defendant's violations of the FMLA, Plaintiff has suffered actual damages in the form of lost wages and benefits (past and future), in an amount that has not yet been fully established, but which will be provided at time of trial. Plaintiff's damages are within the court's jurisdictional limits.

As a result of this willful violation of the FMLA, Plaintiff requests that she be awarded all damages, to which she is entitled, as outlined in 29 U.S.C. §2617, including, but not limited to, lost wages, salary, employee benefits, and any other compensation denied or lost as a result of the violation, plus interest. In addition, Plaintiff requests liquidated damages equal to the amount of reimbursable compensation described above. Plaintiff also requests any additional equitable relief to which she is entitled.

Plaintiff also requests reasonable attorney's fees and court costs.

#### **V. REQUESTS FOR DISCLOSURE**

Pursuant to Rule 194, Defendants are requested to disclose within the time period set forth in Tex. R. Civ. P. 194.3 the information or material described in Rule 194.2(a) - 194.2(l).

#### **VI. Jury Demand**

Plaintiff requests trial by jury on all claims.

#### **VII. Prayer For Relief**

Wherefore, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendants as follows:

- a. Judgment against Defendants for Plaintiff's actual damages, including lost wages and benefits (both back pay and front pay), amount to be determined;
- b. Judgment against Defendants for liquidated damages for the maximum amount allowed by law, including doubling of all back pay awarded;
- c. An order that Defendants take such other and further actions as may be necessary to redress Defendants' violation of the FMLA;
- d. Pre-judgment and post-judgment interest at the maximum amount allowed by law; Costs of suit, including attorney's fees; and
- f. The award of such other and further relief, both at law and in equity, including injunctive relief and reinstatement, to which Plaintiff may be justly entitled.

Respectfully submitted,  
**SCHERR & LEGATE, PL**  
Attorneys for Plaintiff  
109 North Oregon, 12<sup>th</sup> Floor  
El Paso, Texas 79901  
(915) 544-0100  
(915) 532-1759 (Facsimile)  
[omendez@scherrlegate.com](mailto:omendez@scherrlegate.com)

/s/Oscar Mendez Jr.  
**OSCAR MENDEZ JR.**  
State Bar No. 24058473

**IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS****327<sup>TH</sup> JUDICIAL DISTRICT****CLARISSA PORTILLO****Plaintiff,****V.****MUNOZ TRUCKING, INC.****Defendant.**§  
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§**NO. 2018DCV4834****DEFENDANT'S ORIGINAL ANSWER**

**NOW COMES** Defendant, Munoz Trucking, Inc., named Defendant in the above-entitled and numbered cause, and files this Original Answer, and shows the Court:

**GENERAL DENIAL**

Defendant denies each and every allegation of Plaintiff's Original Petition, and demands strict proof thereof as required by the Texas Rules of Civil Procedure.

**PRAYER**

Defendant prays the Court, after notice and hearing or trial, enters judgment in favor of Defendant, awards Defendant the costs of court, attorney's fees, and such other and further relief as Defendant may be entitled to in law or in equity.

Respectfully submitted,

By: /s/ Mario A. Gonzalez  
MARIO A. GONZALEZ  
Texas Bar No. 08130710  
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1522 Montana Ave., Suite 100  
El Paso, Texas 79902  
Tel. (915) 543-9802  
Fax. (915) 533-0588  
Attorney for Defendant  
Munoz Trucking, Inc.

**CERTIFICATE OF SERVICE**

I certify that on January 24, 2019, a true and correct copy of Defendant's Original Answer was served on Oscar Mendez, Jr. electronically through the electronic filing manager.

/s/ Mario A. Gonzalez  
MARIO A. GONZALEZ